IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5969 of 2006 (O&M)
Date of decision: 07.9.2006

M/s MK International, Ludhiana and others

.....Petitioners

vs.

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rajesh Garg, Advocate, for the petitioners.
Mr. Ashwinie Bansal, Advocate, for the respondents.

JUDGMENT:

This writ petition seeks quashing of order of freezing of accounts of the petitioner.

Case of the petitioners is that petitioner Nos. 1 to 3 are proprietorship concerns engaged in the business of manufacture and export of bicycle parts. Petitioner nos. 4 and 5 are partnership concerns doing similar business. Petitioner No.7 is proprietor/partner in the said concerns and petitioner No.6 is wife of petitioner No.7.

Petitioner Nos. 1 to 5 claimed Duty Draw Back under the Duty Entitlement Pass Book Scheme, as a part of Import Export policy. While carrying out investigation into the affairs of M/s Pooja International allegedly belonging to one Sunil Aggarwal, brother-in-law of petitioner No.7, petitioner No.7 was also sought to be summoned and thereafter, accounts of the petitioners were frozen. In similar circumstances, CWP No.5002 of 1995 was allowed by this Court on 26.7.2005, Annexure P.4. Reliance is also placed on a judgment of the Bombay High Court in **Bhavesh Exports Private Limited v. Assistant Collector of Customs**, 2002 (144) ELT 50.

In the reply filed, stand taken by the respondents is that the

bank account has been frozen for the purpose of investigation and securing financial interest of the Government as the petitioners have defrauded the government to the tune of Rs.6 crores and power of seizure of accounts is available under Section 110(3) of the Customs Act, 1962 (for short, 'the Act').

Substantial question of law which arises for consideration is whether freezing of bank accounts is permissible under Section 110 of the Act.

Section 110 of the Act is as under:-

> "110. **Seizure of goods, documents and things** – (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:
>
> Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise, deal with the goods except with the previous permission of such officer.
>
> (1-A) the Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.
>
> (1-B) Where any goods, being goods specified under sub-

section (1-A) have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1-C) where an application is made under sub-section (I-B), the Magistrate shall, as soon as may be , allow the application.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or

things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs."

A perusal of the above provision shows that under sub-section (1), seizure is permissible if goods are liable to confiscation and under sub section (3), seizure of documents or things is permissible if the same is useful for or relevant to proceeding under the Act.

Learned counsel for the revenue submitted that under Section 2 (22) of the Act, "goods" included "currency and negotiable instruments", which also covered the bank account. He also relied upon judgment of Calcutta High Court in **Rohit Kumar v. Union of India**, 2002 (141) ELT 27, wherein, it was observed that the word "things" in sub-section (3) of Section 110 of the Act included money lying in a bank account.

Confiscation of goods under Section 111 of the Act is permissible only if the goods are either prohibited or in respect of which duty has been evaded or have been otherwise improperly imported. This cannot be the situation in respect of the bank account. Similarly, taking the money in the bank account to be the things, the money should be relevant to the proceedings under the Act. Question of relevance of money will arise only if the amount is due, for which there has to be determination of liability, final or provisional by passing an order. Section 142 of the Act provides for recovery of sums due to the government by initiating proceedings through the Collector of the district. Admittedly, no order determining liability of the petitioners has been passed. Section 121 provides for confiscation of sale proceeds of smuggled goods which also requires an order to be passed under section 122 of the Act.

Issue of effecting a seizure and continuing the same was also considered by this court in **Anil Rice and General Mills Private Limited and another v. State of Punjab,** , Crl.M.No.13157 M of 2004, decided on 20.9.2005 with reference to provisions of section 102 of the Code of

Criminal procedure (for short, 'the Code'), which provides for seizure being effected on suspicion of commission of any offence. Of Course, such seizure is permissible only with the permission of a magistrate under section 102 of the Code but such seizure can also not be continued for indefinite period, as held in **Smt. Basava Kom Dyamangouda Patil v. State of Mysore and another,** (1977) 4 SCC 358, paras 4 and 5. It was noticed in **Anil Rice & General Mills (**supra) as under:-

> "In spite of being asked repeatedly, learned counsel for the State has not been able to show any provision for forfeiture of the property. During the course of hearing, provisions of section 8 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Section 3 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, were referred to as instances of statutes providing for forfeiture of properties. Reference was also made to the observations made by the Hon'ble Supreme Court in DDA v. Skipper Constructions Company Private Limited and another, AIR 1996 SC 2005 to the effect that bribe money with any one was public money and if any property was acquired by holder of a public office by corrupt or illegal acts, a law providing for forfeiture of such properties was crying necessity in the present state of society. (Para 31 of the judgment). Learned counsel for the State was unable to point out any such law which may be applicable to the present case."

Again in CWP No.6022 of 2005 (**M/s Mapsa Tapes Private Limited and another v. Union of India and others**, decided on 28.4.2006, it was observed:-

> "It is well-settled that power of search and seizure has to be conceded in the larger interest of the society and to check evasion of tax. The same has been upheld by the Hon'ble Supreme Court in **MP Sharma v. Satish,** AIR

1954 SC 300. It was observed at pages 306-307:

"A power of search and seizure is in any system of jurisprudence an overriding power of the state for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Art.20(3) would be defeated by the statutory provisions for searches."

At page 302 of the said judgment, it was observed:

"A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is necessary and reasonable restriction cannot per se be considered to be unconstitutional. The damage, if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings. We are unable to see how any question of violation of Art. 19(1) (f) is involved in this case in respect of the warrants in question which purport to be under the first alternative of S.96(1) of the Criminal Procedure Code."

The said view has been reiterated in several decisions of the Hon'ble Supreme Court.

At the same time, power of search and seizure affects not only right of possession and enjoyment of property but also privacy of a citizen. It also affects right of personal liberty under Article 21 of the Constitution. Procedure for affecting such a right itself

has to be fair and reasonable, as held by the Hon'ble Supreme Court in **Maneka Gandhi v. Union of India**, AIR 1978 SC 597. Referring to this aspect, in a recent decision in **District Registrar and Collector, Hyderabad and another v. Canara Bank etc.,** AIR 2005 SC 186, it was observed in para 55:-

"**55**. In Smt.Maneka Gandhi v. Union of India and another (1978) 1 SCC 248 – a 7-Judges Bench decision, P.N.Bhagwati,J. (as His Lordship then was) held that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status distinguishing as fundamental rights and give additional protection under Article 19 (Emphasis supplied). Any law interfering with personal liberty of a person must satisfy a triple test : (i) it must prescribe a procedure (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorizing interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21."

In the same decision, issue of right of privacy, has also been dealt with in paras 17 to 39. In the said decision, development in law after judgment of Hon'ble the Supreme Court in **M.P.Sharma (**supra) has also been discussed, particularly in the light of subsequent judgments in **Kharak Singh v. State of UP,**

AIR 1963 SC 1295 and **Govind v. State of MP,** AIR 1975 SC 1378 and it was concluded that right of the State has to be exercised on reasonable basis or on reasonable material. . It was further observed in para 33 of judgment in **Canara Bank** (supra) :

"**33.** Intrusion into privacy may be by – (1) legislative provisions, (2) administrative/executive orders, and (3) judicial orders. The legislative intrusions must be tested on the touchstone of reasonableness as guaranteed by the Constitution and for that purpose the court can go into the proportionality of the intrusion vis-a-vis the purpose sought to be achieved. (2) So far as administrative or executive action is concerned, it has again to be reasonable having regard to the facts and circumstances of the case. (3) As to judicial warrants, the court must have sufficient reason to believe that the search or seizure is warranted and it must keep in mind the extent of search or seizure necessary for the protection of the particular State interest. In addition, as stated earlier, common law recognized rare exceptions such as where warrantless searches could be conducted but these must be in good faith, intended to preserve evidence or intended to prevent sudden danger to person or property." (Underlining supplied).

Thus, though seizure of a bank account may also be justified, the same has to be supported by some statutory provision and procedure for effecting such seizure has to be fair and reasonable.

In the present case, there is no adjudication - administrative or quasi-judicial or judicial by any authority either determining any liability of the petitioners, provisional or final or holding that the amount in bank account represented sale proceeds of any smuggled goods or was otherwise liable to confiscation or that the seizure of the account will be useful for or relevant under the provisions of the Act. It has not been shown that any proceedings are pending against the petitioners except that petitioner No.7

has been summoned as a witness for giving evidence as per Annexures P.5, P.6 and P.7. Show Cause Notice Annexure P.8 has also been issued alleging that goods exported by some of the petitioners were liable to confiscation and amount of draw back claimed and received fraudulently was liable to be recovered under Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995 read with section 76(1) (b) of the Customs Act. The said show cause notice is dated 13.3.2005 and no further order has been shown.

In view of the above, we are of the view that the bank account of the petitioners cannot be kept seized for indefinite period. Respondent No.2 who has seized the bank account is directed to pass an appropriate order within one month from the date of receipt of a copy of this order releasing the bank account unless by then any other appropriate order justifying seizure of bank account is passed.

The writ petition is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

September 7, 2006 (Rajesh Bindal)
'gs' Judge